

# **Senate File 2112 - Introduced**

SENATE FILE 2112  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3035)

## **A BILL FOR**

1 An Act relating to a fiduciary's access to digital assets and  
2 including applicability provisions.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1     Section 1. NEW SECTION.   **633.90 Power of a fiduciary to**  
2 **access digital assets.**

3     Except as modified by a court order or limited in the  
4 instrument creating the fiduciary relationship, a fiduciary may  
5 exercise all rights and powers granted to such fiduciary under  
6 chapter 638.

7     Sec. 2. Section 633A.4402, Code 2016, is amended by adding  
8 the following new subsection:

9     NEW SUBSECTION.   33. Exercise all rights and powers granted  
10 to a trustee under chapter 638.

11    Sec. 3. Section 633B.201, subsection 1, Code 2016, is  
12 amended by adding the following new paragraph:

13    NEW PARAGRAPH.   *i.* Exercise all rights and powers granted  
14 to an agent under chapter 638.

15    Sec. 4. NEW SECTION.   **638.1 Short title.**

16    This chapter may be cited as the "*Iowa Uniform Fiduciary*  
17 *Access to Digital Assets Act*".

18    Sec. 5. NEW SECTION.   **638.2 Definitions.**

19    As used in this chapter, unless the context otherwise  
20 requires:

21    1. "*Account*" means an arrangement under a terms-of-service  
22 agreement in which a custodian carries, maintains, processes,  
23 receives, or stores a digital asset of the user or provides  
24 goods or services to the user.

25    2. "*Agent*" means an attorney-in-fact granted authority under  
26 a durable or nondurable power of attorney under chapter 633B.

27    3. "*Carries*" means engages in the transmission of an  
28 electronic communication.

29    4. "*Catalogue of electronic communications*" means  
30 information that identifies each person with which a user has  
31 had an electronic communication, the time and date of the  
32 communication, and the electronic address of the person.

33    5. "*Conservator*" means the same as defined in section  
34 633.3. "*Conservator*" includes a person appointed to have the  
35 custody and control of the property of a ward in a limited

1 conservatorship unless otherwise provided by order of the  
2 court.

3 6. "*Content of an electronic communication*" means information  
4 concerning the substance or meaning of the communication to  
5 which all of the following apply:

6 a. The communication has been sent or received by a user.

7 b. The communication is in electronic storage by a  
8 custodian providing an electronic-communication service to the  
9 public or is carried or maintained by a custodian providing a  
10 remote-computing service to the public.

11 c. The communication is not readily accessible to the  
12 public.

13 7. "*Court*" means a district court in this state.

14 8. "*Custodian*" means a person that carries, maintains,  
15 processes, receives, or stores a digital asset of a user.

16 9. "*Designated recipient*" means a person chosen by a user  
17 using an online tool to administer digital assets of the user.

18 10. "*Digital asset*" means an electronic record in which an  
19 individual has a right or interest. "*Digital asset*" does not  
20 include an underlying asset or liability unless the asset or  
21 liability is itself an electronic record. "*Digital asset*" does  
22 not include health information or individually identifiable  
23 health information as those terms are defined in the federal  
24 Health Insurance Portability and Accountability Act of 1996,  
25 Pub. L. No. 104-191.

26 11. "*Electronic*" means relating to technology having  
27 electrical, digital, magnetic, wireless, optical,  
28 electromagnetic, or similar capabilities.

29 12. "*Electronic communication*" has the meaning set forth in  
30 18 U.S.C. §2510(12).

31 13. "*Electronic-communication service*" means a custodian  
32 that provides to a user the ability to send or receive an  
33 electronic communication.

34 14. "*Fiduciary*" means a personal representative,  
35 conservator, guardian, agent, or trustee.

1     15. "*Guardian*" means the same as defined in section 633.3.  
2 "*Guardian*" includes a person appointed to have the custody and  
3 care of the person of the ward in a limited guardianship unless  
4 otherwise provided by order of the court.

5     16. "*Information*" means data, text, images, videos, sounds,  
6 codes, computer programs, software, databases, or the like.

7     17. "*Online tool*" means an electronic service provided by  
8 a custodian that allows the user, in an agreement distinct  
9 from the terms-of-service agreement between the custodian and  
10 user, to provide directions for disclosure or nondisclosure of  
11 digital assets to a third person.

12     18. "*Person*" means an individual, estate, business  
13 or nonprofit entity, public corporation, government or  
14 governmental subdivision, agency, instrumentality, or other  
15 legal entity.

16     19. "*Personal representative*" means the same as defined in  
17 section 633.3.

18     20. "*Power of attorney*" means the same as defined in section  
19 633B.102.

20     21. "*Principal*" means the same as defined in section  
21 633B.102.

22     22. "*Record*" means information that is inscribed on a  
23 tangible medium or that is stored in an electronic or other  
24 medium and is retrievable in perceivable form.

25     23. "*Remote-computing service*" means a custodian that  
26 provides to a user computer-processing services or the storage  
27 of digital assets by means of an electronic communications  
28 system, as defined in 18 U.S.C. §2510(14).

29     24. "*Terms-of-service agreement*" means an agreement that  
30 controls the relationship between a user and a custodian.

31     25. "*Trustee*" means the same as defined in section 633.3 or  
32 633A.1102.

33     26. "*User*" means a person that has an account with a  
34 custodian.

35     27. "*Ward*" means an individual for whom a conservator or

1 guardian has been appointed. "Ward" includes an individual  
2 for whom an application for the appointment of a conservator  
3 or guardian is pending and for which a court order authorizing  
4 access under this chapter has been granted.

5 28. "Will" means the same as defined in section 633.3.

6 Sec. 6. NEW SECTION. **638.3 Applicability.**

7 1. This chapter applies to all of the following:

8 a. A fiduciary acting under a will or power of attorney  
9 executed before, on, or after the effective date of this Act.  
10 b. A personal representative acting for a decedent who died  
11 before, on, or after the effective date of this Act.

12 c. A conservator or guardian acting for a ward on or after  
13 the effective date of this Act.

14 d. A trustee acting under a trust created before, on, or  
15 after the effective date of this Act.

16 2. This chapter applies to a custodian if the user resides  
17 in this state or resided in this state at the time of the user's  
18 death.

19 3. This chapter does not apply to a digital asset of an  
20 employer used by an employee in the ordinary course of the  
21 employer's business.

22 Sec. 7. NEW SECTION. **638.4 User direction for disclosure  
23 of digital assets.**

24 1. A user may use an online tool to direct the custodian to  
25 disclose to the designated recipient or not to disclose some  
26 or all of the user's digital assets, including the content  
27 of electronic communications. If the online tool allows the  
28 user to modify or delete a direction at any time, a direction  
29 regarding disclosure using an online tool overrides a contrary  
30 direction by the user in a will, trust, power of attorney, or  
31 other record.

32 2. If a user has not used an online tool to give direction  
33 under subsection 1, or if the custodian has not provided an  
34 online tool, the user may allow or prohibit in a will, trust,  
35 power of attorney, or other record, disclosure to a fiduciary

1 of some or all of the user's digital assets, including the  
2 content of electronic communications sent or received by the  
3 user.

4 3. A user's direction under subsection 1 or 2 overrides a  
5 contrary provision in a terms-of-service agreement that does  
6 not require the user to act affirmatively and distinctly from  
7 the user's assent to the terms of service.

8 Sec. 8. NEW SECTION. **638.5 Terms-of-service agreement.**

9 1. This chapter does not change or impair a right of a  
10 custodian or a user under a terms-of-service agreement to  
11 access and use digital assets of the user.

12 2. This chapter does not give a fiduciary or a designated  
13 recipient any new or expanded rights other than those held by  
14 the user for whom, or for whose estate, the fiduciary or a  
15 designated recipient acts or represents.

16 3. A fiduciary's access to digital assets may be modified or  
17 eliminated by a user, by federal law, or by a terms-of-service  
18 agreement if the user has not provided direction under section  
19 638.4.

20 Sec. 9. NEW SECTION. **638.6 Procedure for disclosing digital**  
21 **assets.**

22 1. When disclosing digital assets of a user under this  
23 chapter, the custodian may at its sole discretion do any of the  
24 following:

25 a. Grant a fiduciary or designated recipient full access to  
26 the user's account.

27 b. Grant a fiduciary or designated recipient partial access  
28 to the user's account sufficient to perform the tasks with  
29 which the fiduciary or designated recipient is charged.

30 c. Provide a fiduciary or designated recipient a copy in  
31 a record of any digital asset that, on the date the custodian  
32 received the request for disclosure, the user could have  
33 accessed if the user were alive, was competent, and had access  
34 to the account.

35 2. A custodian may assess a reasonable administrative

1 charge for the cost of disclosing digital assets under this  
2 chapter.

3 3. A custodian need not disclose under this chapter a  
4 digital asset deleted by a user.

5 4. If a user directs or a fiduciary requests a custodian to  
6 disclose some, but not all, of the user's digital assets, the  
7 custodian need not disclose the assets if segregation of the  
8 assets would impose an undue burden on the custodian. If the  
9 custodian believes the direction or request imposes an undue  
10 burden, the custodian or fiduciary may seek an order from the  
11 court to disclose any of the following:

12 a. A subset of the user's digital assets limited by date.

13 b. All of the user's digital assets to the fiduciary or  
14 designated recipient.

15 c. None of the user's digital assets.

16 d. All of the user's digital assets to the court for review  
17 in camera.

18 Sec. 10. NEW SECTION. 638.7 Disclosure of content of  
19 electronic communications of deceased user.

20 If a deceased user consented or a court directs disclosure  
21 of the contents of electronic communications of the user, the  
22 custodian shall disclose to the personal representative of the  
23 estate of the user the content of an electronic communication  
24 sent or received by the user if the personal representative  
25 gives the custodian all of the following:

26 1. A written request for disclosure in physical or  
27 electronic form.

28 2. A certified copy of the death certificate of the user.

29 3. A certified copy of the letters of appointment of the  
30 personal representative, an original affidavit made pursuant  
31 to section 633.356, or a file-stamped copy of the court order  
32 authorizing the personal representative to administer the  
33 user's estate.

34 4. Unless the user provided direction using an online tool,  
35 a copy of the user's will, trust, power of attorney, or other

1 record evidencing the user's consent to disclosure of the  
2 content of electronic communications.

3 5. If requested by the custodian, any of the following:

4 a. A number, username, address, or other unique subscriber  
5 or account identifier assigned by the custodian to identify the  
6 user's account.

7 b. Evidence linking the account to the user.

8 c. A finding by the court of any of the following:

9 (1) The user had a specific account with the custodian,  
10 identifiable by the information specified in paragraph "a".

11 (2) Disclosure of the content of electronic communications  
12 of the user would not violate 18 U.S.C. §2701 et seq., 47  
13 U.S.C. §222, or other applicable law.

14 (3) Unless the user provided direction using an online  
15 tool, that the user consented to disclosure of the content of  
16 electronic communications.

17 (4) Disclosure of the content of electronic communications  
18 of the user is reasonably necessary for administration of the  
19 estate.

20 Sec. 11. NEW SECTION. 638.8 Disclosure of other digital  
21 assets of deceased user.

22 Unless the user prohibited disclosure of digital assets or  
23 the court directs otherwise, a custodian shall disclose to the  
24 personal representative of the estate of a deceased user a  
25 catalogue of electronic communications sent or received by the  
26 user and digital assets, other than the content of electronic  
27 communications, of the user, if the representative gives the  
28 custodian all of the following:

29 1. A written request for disclosure in physical or  
30 electronic form.

31 2. A certified copy of the death certificate of the user.

32 3. A certified copy of the letters of appointment of the  
33 personal representative, an original affidavit made pursuant  
34 to section 633.356, or a file-stamped copy of the court order  
35 authorizing the personal representative to administer the



1 user's estate.

2 4. If requested by the custodian, any of the following:

3 a. A number, username, address, or other unique subscriber  
4 or account identifier assigned by the custodian to identify the  
5 user's account.

6 b. Evidence linking the account to the user.

7 c. An affidavit stating that disclosure of the user's  
8 digital assets is reasonably necessary for administration of  
9 the estate.

10 d. A finding by the court of any of the following:

11 (1) The user had a specific account with the custodian,  
12 identifiable by the information specified in paragraph "a".

13 (2) Disclosure of the user's digital assets is reasonably  
14 necessary for administration of the estate.

15 Sec. 12. NEW SECTION. 638.9 Disclosure of content of  
16 electronic communications of principal.

17 To the extent a power of attorney expressly grants an agent  
18 authority over the content of electronic communications sent  
19 or received by the principal and unless directed otherwise by  
20 the principal or the court, a custodian shall disclose to the  
21 agent the content if the agent gives the custodian all of the  
22 following:

23 1. A written request for disclosure in physical or  
24 electronic form.

25 2. An original or copy of the power of attorney expressly  
26 granting the agent authority over the content of electronic  
27 communications of the principal.

28 3. A certification by the agent, under penalty of perjury,  
29 that the power of attorney is in effect. The certification  
30 form provided in section 633B.302 shall satisfy the requirement  
31 of this subsection.

32 4. If requested by the custodian, any of the following:

33 a. A number, username, address, or other unique subscriber  
34 or account identifier assigned by the custodian to identify the  
35 principal's account.

1     *b.* Evidence linking the account to the principal.

2     Sec. 13. NEW SECTION. 638.10 Disclosure of other digital  
3 assets of principal.

4     Unless otherwise ordered by the court, directed by the  
5 principal, or provided by a power of attorney, a custodian  
6 shall disclose to an agent with specific authority over digital  
7 assets or general authority to act on behalf of a principal  
8 a catalogue of electronic communications sent or received by  
9 the principal and digital assets, other than the content of  
10 electronic communications, of the principal if the agent gives  
11 the custodian all of the following:

12     1. A written request for disclosure in physical or  
13 electronic form.

14     2. An original or a copy of the power of attorney that gives  
15 the agent specific authority over digital assets or general  
16 authority to act on behalf of the principal.

17     3. A certification by the agent, under penalty of perjury,  
18 that the power of attorney is in effect.

19     4. If requested by the custodian, any of the following:

20         *a.* A number, username, address, or other unique subscriber  
21 or account identifier assigned by the custodian to identify the  
22 principal's account.

23         *b.* Evidence linking the account to the principal.

24     Sec. 14. NEW SECTION. 638.11 Disclosure of digital assets  
25 held in trust when trustee is original user.

26     Unless otherwise ordered by the court or provided in a trust,  
27 a custodian shall disclose to a trustee that is an original  
28 user of an account any digital asset of the account held in  
29 trust, including a catalogue of electronic communications of  
30 the trustee and the content of electronic communications.

31     Sec. 15. NEW SECTION. 638.12 Disclosure of contents of  
32 electronic communications held in trust when trustee not original  
33 user.

34     Unless otherwise ordered by the court, directed by the user,  
35 or provided in a trust, a custodian shall disclose to a trustee

1 that is not an original user of an account the content of an  
2 electronic communication sent or received by an original or  
3 successor user and carried, maintained, processed, received,  
4 or stored by the custodian in the account of the trust if the  
5 trustee gives the custodian all of the following:

6 1. A written request for disclosure in physical or  
7 electronic form.

8 2. A certified copy of the trust instrument or a  
9 certification of trust under section 633A.4604 that  
10 includes consent to disclosure of the content of electronic  
11 communications to the trustee.

12 3. A certification by the trustee, under penalty of perjury,  
13 that the trust exists and the trustee is a currently acting  
14 trustee of the trust.

15 4. If requested by the custodian, any of the following:

16 a. A number, username, address, or other unique subscriber  
17 or account identifier assigned by the custodian to identify the  
18 trust's account.

19 b. Evidence linking the account to the trust.

20 Sec. 16. NEW SECTION. 638.13 Disclosure of other digital  
21 assets held in trust when trustee not original user.

22 Unless otherwise ordered by the court, directed by the  
23 user, or provided in a trust, a custodian shall disclose, to a  
24 trustee that is not an original user of an account, a catalogue  
25 of electronic communications sent or received by an original  
26 or successor user and stored, carried, or maintained by the  
27 custodian in an account of the trust and any digital assets,  
28 other than the content of electronic communications, in which  
29 the trust has a right or interest if the trustee gives the  
30 custodian all of the following:

31 1. A written request for disclosure in physical or  
32 electronic form.

33 2. A certified copy of the trust instrument or a  
34 certification of trust under section 633A.4604.

35 3. A certification by the trustee, under penalty of perjury,

1 that the trust exists and the trustee is a currently acting  
2 trustee of the trust.

3 4. If requested by the custodian, any of the following:

4 a. A number, username, address, or other unique subscriber  
5 or account identifier assigned by the custodian to identify the  
6 trust's account.

7 b. Evidence linking the account to the trust.

8 Sec. 17. NEW SECTION. 638.14 Disclosure of digital assets  
9 to conservator or guardian of a ward.

10 1. After an opportunity for a hearing to all interested  
11 parties, the court may grant a conservator or guardian access  
12 to the digital assets of a ward.

13 2. Unless otherwise ordered by the court or directed by the  
14 user, a custodian shall disclose to a conservator or guardian  
15 the catalogue of electronic communications sent or received  
16 by a ward and any digital assets, other than the content of  
17 electronic communications, in which the ward has a right or  
18 interest if the conservator or guardian gives the custodian all  
19 of the following:

20 a. A written request for disclosure in physical or  
21 electronic form.

22 b. A file-stamped copy of the court order that gives the  
23 conservator or guardian authority over the digital assets of  
24 the ward.

25 c. If requested by the custodian, any of the following:

26 (1) A number, username, address, or other unique subscriber  
27 or account identifier assigned by the custodian to identify the  
28 account of the ward.

29 (2) Evidence linking the account to the ward.

30 3. If the conservatorship or guardianship is not limited,  
31 the conservator or guardian may request a custodian of the  
32 digital assets of the ward to suspend or terminate an account  
33 of the ward for good cause. A request made under this section  
34 must be accompanied by a file-stamped copy of the court order  
35 establishing the conservatorship or guardianship.

1     Sec. 18. NEW SECTION.   **638.15 Fiduciary duty and authority.**

2     1. The legal duties imposed on a fiduciary charged with  
3 managing tangible property apply to the management of digital  
4 assets, including all of the following:

5     *a.* The duty of care.

6     *b.* The duty of loyalty.

7     *c.* The duty of confidentiality.

8     2. All of the following apply to a fiduciary's or a  
9 designated recipient's authority with respect to a digital  
10 asset of a user:

11    *a.* Except as otherwise provided in section 638.4, the  
12 fiduciary's or designated recipient's authority is subject to  
13 the applicable terms of service.

14    *b.* The fiduciary's or designated recipient's authority is  
15 subject to other applicable law, including copyright law.

16    *c.* In the case of a fiduciary, the fiduciary's authority is  
17 limited by the scope of the fiduciary's duties.

18    *d.* The fiduciary's or designated recipient's authority shall  
19 not be used to impersonate the user.

20    3. A fiduciary with authority over the property of a  
21 decedent, ward, principal, or settlor has the right to access  
22 any digital asset in which the decedent, ward, principal, or  
23 settlor had a right or interest and that is not held by a  
24 custodian or subject to a terms-of-service agreement.

25    4. A fiduciary acting within the scope of the fiduciary's  
26 duties is an authorized user of the property of the decedent,  
27 ward, principal, or settlor for the purpose of applicable  
28 computer-fraud and unauthorized-computer-access laws, including  
29 section 716.6B.

30    5. A fiduciary with authority over the tangible, personal  
31 property of a decedent, ward, principal, or settlor possesses  
32 all of the following authority:

33    *a.* Has the right to access the property and any digital  
34 asset stored in the property.

35    *b.* Is an authorized user for the purpose of computer-fraud

1 and unauthorized-computer-access laws, including section  
2 716.6B.

3     6. A custodian may disclose information in an account to  
4 a fiduciary of the user when the information is required to  
5 terminate an account used to access digital assets licensed to  
6 the user.

7     7. A fiduciary of a user may request a custodian to  
8 terminate the user's account. A request for termination must  
9 be in writing, in either physical or electronic form, and  
10 accompanied by all of the following:

11     a. If the user is deceased, a certified copy of the death  
12 certificate of the user.

13     b. A certified copy of the letters of appointment of the  
14 personal representative, an original affidavit made pursuant  
15 to section 633.356, a file-stamped copy of the court order  
16 authorizing the personal representative to administer the  
17 user's estate, power of attorney, or trust, including a  
18 certification of trust, giving the fiduciary authority over the  
19 account.

20     c. If requested by the custodian, any of the following:

21         (1) A number, username, address, or other unique subscriber  
22 or account identifier assigned by the custodian to identify the  
23 user's account.

24         (2) Evidence linking the account to the user.

25         (3) A finding by the court that the user had a specific  
26 account with the custodian, identifiable by the information  
27 specified in subparagraph (1).

28     Sec. 19. NEW SECTION. 638.16 Custodian compliance and  
29 immunity.

30     1. Not later than sixty days after receipt of the  
31 information required under sections 638.7 through 638.14, a  
32 custodian shall comply with a request under this chapter from a  
33 fiduciary or designated recipient to disclose digital assets or  
34 terminate an account. If the custodian fails to comply, the  
35 fiduciary or designated recipient may apply to the court for

1 an order directing compliance.

2 2. An order under subsection 1 directing compliance must  
3 contain a finding that compliance is not in violation of 18  
4 U.S.C. §2702.

5 3. A custodian may notify the user that a request for  
6 disclosure or to terminate an account was made under this  
7 chapter.

8 4. A custodian may deny a request under this chapter from  
9 a fiduciary or designated recipient for disclosure of digital  
10 assets or to terminate an account if the custodian is aware of  
11 any lawful access to the account following the receipt of the  
12 fiduciary's request.

13 5. This chapter does not limit a custodian's ability  
14 to obtain or require a fiduciary or designated recipient  
15 requesting disclosure or termination under this chapter to  
16 obtain a court order which finds all of the following:

17 a. That the account belongs to the ward or principal.

18 b. That there is sufficient consent from the ward or  
19 principal to support the requested disclosure.

20 c. Any specific factual finding required by any applicable  
21 law other than this chapter.

22 6. A custodian and the custodian's officers, employees, and  
23 agents are immune from liability for an act or omission done in  
24 good faith in compliance with this chapter.

25 Sec. 20. NEW SECTION. 638.17 Uniformity of application and  
26 construction.

27 In applying and construing this chapter, consideration must  
28 be given to the need to promote uniformity of the law with  
29 respect to this chapter's subject matter among states that  
30 enact the revised uniform fiduciary access to digital assets  
31 Act.

32 Sec. 21. NEW SECTION. 638.18 Relation to Electronic  
33 Signatures in Global and National Commerce Act.

34 This chapter modifies, limits, or supersedes the federal  
35 Electronic Signatures in Global and National Commerce Act, 15

1 U.S.C. §7001 et seq., but does not modify, limit, or supersede  
2 section 101(c) of that Act, 15 U.S.C. §7001(c), or authorize  
3 electronic delivery of any of the notices described in section  
4 103(b) of that Act, 15 U.S.C. §7003(b).

5 EXPLANATION

6 The inclusion of this explanation does not constitute agreement with  
7 the explanation's substance by the members of the general assembly.

8 This bill relates to a fiduciary's access to digital assets  
9 and includes applicability provisions.

10 The bill defines "digital asset" as an electronic record in  
11 which an individual has a right or interest. "Digital asset"  
12 does not include an underlying asset or liability unless the  
13 asset or liability is itself an electronic record. "Digital  
14 asset" does not include health information or individually  
15 identifiable health information as those terms are defined in  
16 the federal Health Insurance Portability and Accountability  
17 Act. "Fiduciary" is defined as an agent under a power of  
18 attorney pursuant to Code chapter 633B, a conservator,  
19 guardian, personal representative, or trustee as each is  
20 defined under Code section 633.3, or a trustee as defined in  
21 Code section 633A.1102. "Custodian" is defined as a person  
22 that carries, maintains, processes, receives, or stores a  
23 digital asset of a user. "User" is defined as a person that has  
24 an account with a custodian.

25 The bill provides that a user may direct a custodian to  
26 disclose to the designated recipient or not to disclose  
27 the user's digital assets to a fiduciary through an online  
28 tool, a will, trust, power of attorney, or other record. A  
29 terms-of-service agreement which the user agreed to may also  
30 provide whether the custodian shall disclose the user's digital  
31 assets to a fiduciary.

32 The bill provides that a custodian shall disclose the  
33 electronic communications of a deceased user to the personal  
34 representative of the estate if the personal representative  
35 provides the custodian a written request for disclosure,



1 a certified copy of the death certificate, letters of  
2 appointment, and documentation evidencing the user's consent  
3 to disclosure of the content of electronic communications,  
4 unless the user provided such direction in an online  
5 tool. A custodian shall disclose other digital assets of a  
6 deceased user to the personal representative if the personal  
7 representative provides a written request for disclosure,  
8 a certified copy of the death certificate, and letters of  
9 appointment.

10 The bill provides that if a power of attorney expressly  
11 grants an agent authority over the content of electronic  
12 communications, a custodian shall disclose such content if  
13 the agent provides to the custodian a written request for  
14 disclosure, a copy of the power of attorney expressly granting  
15 the agent authority over the content of the principal's  
16 electronic communications, and a certification by the agent  
17 that the power of attorney is in effect. Where a power of  
18 attorney grants an agent specific authority over digital  
19 assets or general authority to act on behalf of the principal,  
20 the custodian shall disclose a catalogue of electronic  
21 communications sent or received by the principal and digital  
22 assets, other than the content of electronic communications,  
23 if the agent provides to the custodian a written request for  
24 disclosure, a copy of the power of attorney giving the agent  
25 specific authority over digital assets or general authority  
26 to act on behalf of the principal, and a certification by the  
27 agent that the power of attorney is in effect.

28 The bill provides that a custodian shall disclose to a  
29 trustee that is an original user of an account any digital  
30 asset of the account held in trust. The bill provides that  
31 unless otherwise ordered by the court, directed by the user, or  
32 provided in a trust, a custodian shall disclose to a trustee  
33 that is not an original user the content of an electronic  
34 communication sent or received by a user if the trustee gives  
35 the custodian a written request, a certified copy of the trust

1 that includes consent to disclose the content of electronic  
2 communications to the trustee, and a certification by the  
3 trustee that the trust exists and the trustee is a currently  
4 acting trustee. A custodian shall disclose to a trustee  
5 digital assets in which the trust has an interest and that  
6 are not electronic communications if the trustee gives the  
7 custodian a written request, a certified copy of the trust  
8 instrument or certification, and a certification by the trustee  
9 that the trust exists and the trustee is a currently acting  
10 trustee.

11 The bill provides that after an opportunity for a hearing,  
12 the court may grant a conservator or guardian access to  
13 a ward's digital assets. The bill also provides that a  
14 custodian shall disclose to a conservator or guardian the  
15 catalogue of electronic communications of a ward and any of  
16 the ward's other digital assets, other than the content of  
17 electronic communications, if the conservator or guardian  
18 provides the custodian with a written request for disclosure  
19 and a copy of the court order that gives the conservator or  
20 guardian authority over the ward's digital assets. If the  
21 conservatorship or guardianship is not limited, the conservator  
22 or guardian may request a custodian to suspend or terminate an  
23 account of the ward for good cause.

24 The bill imposes on a fiduciary the duties of care, loyalty,  
25 and confidentiality and specifies a fiduciary's authority with  
26 respect to digital assets of a user.

27 The bill provides that a custodian has 60 days to comply with  
28 a request under the new Code chapter. If the custodian fails  
29 to comply, the fiduciary may apply for a court order directing  
30 compliance.

31 The bill provides that a custodian and the custodian's  
32 officers, employees, and agents are immune from liability for  
33 an act or omission done in good faith in compliance with the  
34 new Code chapter.

35 The bill provides applicability provisions. The bill

1 applies to a fiduciary acting under a will or a power of  
2 attorney executed before, on, or after the effective date of  
3 the bill. The bill applies to a personal representative acting  
4 for a decedent who dies before, on, or after the effective date  
5 of the bill. The bill applies to a conservator or guardian  
6 acting for a ward on or after the effective date of the bill.  
7 The bill applies to a trustee acting under a trust created  
8 before, on, or after the effective date of the bill.  
9 The bill makes conforming changes.